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Attorney for Defendant, Raymond Flores

UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA - SAN JOSE DIVISION

DOMINIC CONCETTI, by his Guardian Ad Litem,  
 SHARON FRASER

Plaintiff,

vs.

IMPAC FUNDING CORPORATION, a  
 California Corporation, dba IMPAC;  
 UNIVERSAL MORTGAGE AND SALES, INC.,  
 a California Corporation, RAYMOND FLORES,  
 an individual; and ERIK S. GONZALES, an  
 individual

Defendants

Case Number: C 07 05410 JW

RAYMOND FLORES' RULE  
 26 STATEMENT

RAYMOND FLORES submits this Statement of Disclosure pursuant to Federal Rule of  
 Civil Procedure § 26.

**I. WITNESSES:**

Raymond Flores can identify the following witnesses in this matter.

**Witness:                      Contact Information:**

Raymond Flores                      c/o Charles Standard  
    152 N. Third Street, Suite 700  
    San Jose, CA 95112

Dominic Concetti                      c/o Jessica Fry  
    Fair Housing Project  
    111 W. Saint John Street, Suite 315

San Jose, CA 95113

Sharon Fraser c/o Jessica Fry  
Fair Housing Project  
111 W. Saint John Street, Suite 315  
San Jose, CA 95113

Frank Vargas, CPA

## II. DOCUMENTS:

Raymond Flores can identify the following documents which he has in his custody or control which support his claims or defenses.

| <b><u>Date:</u></b> | <b><u>Document:</u></b>  |
|---------------------|--|
| 09/21/2005          | Promissory Note executed by Dominic Concetti in favor of Pro 30 Funding.                             |
| 09/21/2005          | Deed of Trust securing Promissory Note executed by Raymond Concetti in favor of Pro 30 Funding.      |
| 09/29/2005          | Borrowers Closing Statement (Pro 30 Funding)   |
| 10/10/2006          | Country Wide Payoff Demand   |
| 09/29/2005          | Hud 1 - Pro 30 Funding Loan  |
| 10/17/2005          | Selected Interest Rates from Federal Reserve   |
| 09/13/2006          | Credit Report - Dominic Concetti   |
| 10/23/2005          | Borrower's Final Closing Statement (Impac Loan)  |
| 10/10/2006          | Promissory Note executed by Dominic Concetti in favor of Impac Lending Group.                        |
| 10/23/2006          | Deed of Trust securing Promissory Note executed by Raymond Concetti in favor of Impac Lending Group. |
| 2006                | Cell Phone Bills for Raymond Flores reflecting phone calls made by Raymond Flores.                   |
| 10/23/2006          | Hud 1 Statement (Impac Lending Group loan)   |
|                     | Loan Application for Dominic Concetti  |

## III. DAMAGES:

Mr. Concetti's damages in this matter are limited to the sum of \$ 4,317.95. A discussion of this claim is provided below.

### A. PROCEEDS OF LOAN BALANCE WHICH BENEFITTED MR. CONCETTI:

While Mr. Concetti's principal rose when he refinanced his loan, the increase covered the

1 following expenses:

- 2 a. Pay-off of increased principal (negative amortization) since the last refinancing
- 3 (\$ 9,991.86;
- 4 b. Interest on Mr. Concetti's existing loan (\$ 5,182.80);
- 5 c. Interest towards Mr. Concetti's new loan (\$ 1,408.00);
- 6 d. Late charges (\$ 74.91);
- 7 e. Property insurance (\$ 202.80);
- 8 f. Property taxes (\$ 289.29);
- 9 g. Cash to Mr. Concetti (\$46,971.24);
- 10 h. Payments towards Mr. Concetti's credit cards (\$ 12,966.00);

11 Regarding items a through a through f (principal, interest, late fees, property taxes and  
 12 insurance), above, these items would have been incurred by Mr. Concetti whether or not he  
 13 refinanced his home. Meaning, he cannot claim these expenses as damages. Items g and h represent  
 14 monies which were either provided directly to Mr. Concetti (cash), or, for paid for his direct benefit  
 15 (credit card payments). Meaning, he cannot claim these as damages.

16 **B. INCREASE IN PRINCIPAL WHICH DID NOT BENEFIT MR. CONCETTI:**

17 The only charges which did not benefit Mr. Concetti directly concern the pre-payment  
 18 penalty he paid (\$ 13,585.15), and, the fees associated for brokering the loan (\$ 4,317.95).

19 Regarding the pre-payment penalties and fees incurred by Mr. Concetti, Mr. Flores notes the  
 20 following.

21 In plaintiff's complaint, he indicated that at the time he refinanced his home, his expenses  
 22 exceeded his monthly mortgage obligations. This left Mr. Concetti with the option. Either selling his  
 23 home, or, refinancing same. Had Mr. Concetti sold his home, he would have still incurred a  
 24 prepayment penalty (though he would have avoided the financing fees). Had Mr. Concetti  
 25 refinanced the 2005 note, he would have incurred both fees and the prepayment penalty. Had Mr.  
 26 Concetti taken a second note instead of refinancing the 2005 note, he could have avoided a  
 27 prepayment penalty, though he would have paid a higher interest rate. In time, the extra interest  
 28 payments would have exceeded the amount of the prepayment penalty.

1 In short, given Mr. Concetti's situation (expenses exceeding his income), he would have  
2 incurred the same expenses detailed above, regardless of the path he pursued. In short, if Mr.  
3 Concetti has been harmed by the refinancing of his home, his consequential damages in this case  
4 would be limited to \$ 4,317.95.

5 Dated: March 10, 2008

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CHARLES M. STANDARD  
Attorney for Defendant, RAYMOND FLORES  
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